



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B2

File: WAC 99 051 50461 Office: California Service Center Date:

NOV 29 2000

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Public Copy

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

The petitioner states that she seeks employment as the artistic director and performer with the [REDACTED] acrobatic troupe. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Counsel states "[i]n 1979, the [REDACTED] won the Golden Clown Award at the Monte Carlo

Circus Festival - the single highest award given in the field of Circus performance in the world." The award was actually conferred in 1985, not 1979 (as counsel later correctly observes).

Counsel asserts that the Golden Clown award is "unilaterally accepted as the equivalent of the Academy Award or Olympic Gold Medal." Counsel offers no support for this characterization of the award.¹ The evidence for the award itself is discussed below. Whatever the reputation of the Golden Clown award within the acrobatic community, the presentation of the award is not general "front-page" news as is the case with the Olympic Gold Medal, the Academy Awards, and the Nobel Prize. The regulations do not state or imply that every field of endeavor has a corresponding major international prize which is sufficient to establish eligibility. Any prizes awarded to the petitioner can, of course, be considered under the "lesser prizes" criterion, below.

Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel states:

[The ██████████ received the Golden Clown award at the ██████████ Circus Festival, as well as First Place and the Gold Clown award in the ██████████ Festival in 1996 and the First Place award at the 1993 International ██████████. In addition, [the petitioner] was awarded her "Master of Sport" certificate in gymnastics by the ██████████ government. In 1982 she was awarded with a Bronze medal by the Central Committee of the ██████████ for her achievement in circus performance. A local tourist magazine, ██████████ wrote: "... both [the petitioner and another troupe member] were named honorary performers in Russia for their contributions in the arts by ██████████ alchev and ██████████. ... [T]he award "Honorary Artist of the ██████████ [was] presented to her by President ██████████

(References to exhibit numbers omitted.) An article in "a local tourist magazine" is not first-hand documentation of the

¹We note that "unilaterally" means "by one side." Thus, "unilateral" recognition of an award is, arguably, the virtual opposite of "universal" recognition of such an award.

petitioner's receipt of the awards mentioned therein. The petitioner's "Master of Sport" certificate appears to be an employment credential rather than a prize or award for excellence; it bears the legend "Identification Card." The document naming the petitioner an "Honorary Artist of Russian Federation" is a small certificate with the petitioner's name and other information handwritten into blank spaces. While the certificate states that the title was awarded by "Decree of the President of the Russian Federation," there is no evidence that President Yeltsin personally presented the award to the petitioner, or to establish the criteria for the award or even how many such decrees are issued in a given year. The petitioner's document is identified as "Card No. 71."

The petitioner's bronze medal and "Young Achiever" title were presented by the [REDACTED]. The available documentation does not specify whether the "Central Committee of [REDACTED]" is identical to "the Central Committee [REDACTED]" as counsel claims.

Counsel states that "in this field awards are not given to individuals. Yet no one can achieve more in this field than the [petitioner] already has achieved." The record, nevertheless, shows that the petitioner has received awards as an individual; at issue is the importance of these awards. Counsel offers no support for the claim that no higher achievements are possible in the petitioner's field.

Among the group awards, the petitioner has not established the criteria for the awards, or even whether she was actually performing in the troupe at the time of the awards. If the awards recognize performance, rather than choreography, and the petitioner was the choreographer but not a performing member at the time of the awards, then the petitioner is not responsible for the troupe's winning the awards.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Counsel states that the aforementioned article from the [REDACTED] satisfies this criterion. The publication, however, is not a major national publication but rather "a local publication geared to tourists." The petitioner cannot garner national acclaim from local media coverage.

We note that, according to the [REDACTED] article, "the group consists of 12 performers ranging in age from 14 to 35." The petitioner was 38 years old in 1997 when this article was published. The article, which refers to the petitioner only as the group's choreographer, casts doubt on the petitioner's assertion on the petition form that she seeks employment as a "performer."

An article from a Chilean newspaper is not translated from the Spanish original, and therefore we cannot consider its content.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel observes that the [REDACTED] toured the world in "The [REDACTED] of 1991," and have headlined at the [REDACTED]. This criterion, however, appears to be geared more toward visual artists such as painters and sculptors. Every performing artist's work is on "display" because such performers appear before audiences. The regulations offer a separate criterion for the performing arts, below, because what is especially significant for a performer is not the fact that audiences have seen the performer, but rather the relative sizes of those audiences. The relevant criterion for performing artists is:

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner submits no documentation to establish how she, as a performer, has fared compared to other acrobats, or to show that her work as artistic director and choreographer has had a significant impact on the commercial success of her troupe.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel asserts that the petitioner "has toured the world as a member of the [REDACTED] Circus. As a member of the [REDACTED] he [sic] has won some of the most significant national and international Circus competitions." As its artistic director, the petitioner certainly plays a leading, critical role for the [REDACTED] but the record does not persuasively establish that the troupe has a distinguished reputation in comparison with other acrobatic troupes.

The director denied the petition, noting that an individual does not necessarily gain acclaim by being a member of a successful group. On appeal, counsel states "[t]he decision states that the [petitioner] has 'independent recognition' in the field, or by showing her standing within the group [sic]." This assertion appears to be a sentence fragment, missing critical wording. The director did not find that the petitioner has independent recognition; rather, the director emphasized the petitioner's failure to establish such recognition.

Counsel states that he will elaborate upon his arguments in a forthcoming brief. To date, however, nine months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

The statute demands "substantial documentation" to establish sustained national or international acclaim. The petitioner's documentation is sparse and fragmentary, with much evidence unexplained except for counsel's unsubstantiated claims regarding the significance of that evidence. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has clearly enjoyed some level of success as an acrobat, and her troupe has performed with prestigious circuses, but these facts do not compel the conclusion that the petitioner, as an individual, is among the top acrobats nationally or internationally. With regards to the petitioner's past honors as an acrobat, even if we accept counsel's characterization of the importance of those honors, it is not at all clear that the petitioner is still performing. The statute and regulations demand that the petitioner continue to work in the field of claimed extraordinary ability. The record contains no evidence that the petitioner has won any recognition as a choreographer or artistic director of other acrobats.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished herself as an acrobat, or as an artistic director, to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent in her field, and has enjoyed some success, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.